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Proposed General Bankruptcy and Restructuring
Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

HI-FIVE ENTERPRISES, LLC, a
California limited liability company; **ONE**
SOUTH LAKE STREET, LLC, a
Nevada limited liability company; and
WILD GAME NG, LLC, a Nevada
limited liability company d/b/a The Siena
Hotel Spa & Casino,

Debtors.

☒ Affects all Debtors

☐ Applies only to Hi-Five Enterprises,
LLC

☐ Applies only to One South Lake Street,
LLC

☐ Applies only to Wild Game Ng, LLC

Case No. 4:10-bk-48268-RJN

[Jointly Administered with Case Nos. 4:10-bk-
48272-RJN and 4:10-bk-48270-RJN]

Chapter 11

**NOTICE OF MOTION AND MOTION FOR
ORDER AUTHORIZING DEBTORS AND
DEBTORS-IN-POSSESSION TO EMPLOY
CERTAIN PROFESSIONALS IN THE
ORDINARY COURSE OF BUSINESS AND
TO SET PROCEDURES; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF BARNEY NG IN
SUPPORT THEREOF**

Hearing

DATE: September 29, 2010

TIME: 11:30 a.m.

PLACE: 1300 Clay Street, Courtroom 220
Oakland, CA 94612

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1 **TO: THE HONORABLE RANDALL J. NEWSOME; THE OFFICE OF THE U.S.**
2 **TRUSTEE; AND ALL PARTIES ENTITLED TO NOTICE:**

3 **PLEASE TAKE NOTICE** that on September 29, 2010, at 11:30 a.m., a hearing will be
4 held before the Honorable Randall J. Newsome, United States Bankruptcy Judge, at Courtroom
5 220, 1300 Clay Street, Oakland, California 94612, on this *Motion for Order Authorizing Debtors*
6 *and Debtors-in-Possession to Employ Certain Professionals in the Ordinary Course of Business*
7 *and to Set Procedures* (the "Motion") filed by Hi-Five Enterprises, LLC and its affiliated debtors
8 and debtors-in-possession in these jointly administered chapter 11 cases.¹

9 **PLEASE TAKE FURTHER NOTICE** that the Motion asks the Court to authorize the
10 Debtors to employ and compensate certain professionals in the ordinary course of Debtors'
11 business under 11 U.S.C. §§ 363(c)(1) and 1108. Specifically, Debtors are seeking authority to
12 continue their relationships with certain ordinary course professionals who provide human
13 resource, gaming compliance and general legal services to the Debtors prior to July 21, 2010 (the
14 "Petition Date"), without requiring Debtors to seek any other or further order or approval of the
15 Court. The professionals that Debtors are initially seeking to employ in the ordinary course
16 consist of: (1) the law firm of Kelly Law Group, LLP; (2) the gaming compliance and regulation
17 firm of KMC, Inc. ("KMC"); (3) the staffing firm of Elever Professional; and (4) the hospitality
18 management firm of Onsite Consulting (collectively, the "Ordinary Course Professionals").

19 **PLEASE TAKE FURTHER NOTICE** that, if Debtors wish to employ any ordinary
20 course professional in addition to or other than the foregoing Ordinary Course Professionals,
21 Debtors will serve all parties entitled to notice with a notice setting forth the name of the
22 proposed ordinary course professional, the nature and scope of the services that such professional
23 is intended to render to Debtors, and the estimated compensation to be paid to such proposed
24 ordinary course professional. If a written objection to the proposed retention is not filed and
25 served within 10 days after the mailing of the notice, Debtors will be entitled to proceed with the

26
27 ¹ Hi-Five's debtor affiliates are One South Lake Street, LLC, a Nevada limited liability company ("One South") and
28 Wild Game NG, LLC, a Nevada limited liability company ("Wild Game"). Hi-Five, One South and Wild Game
are collectively referred to as the "Debtors".

1 retention and to compensate the ordinary course professional in the ordinary course of business, at
2 the expense of Debtors' estates and without the need for any other or further order of the Court.
3 If a timely and properly served objection is made to the proposed retention, and Debtors and such
4 objecting party cannot promptly resolve the objection, a hearing to resolve the dispute will be
5 held before the Court s soon as practicable subject to the availability of the Court.

6 **PLEASE TAKE FURTHER NOTICE** that, as set forth in greater detail in the annexed
7 Memorandum of Points and Authorities, there are good and sufficient grounds to approve the
8 Motion. Debtors believe that the relief requested in the Motion is in the best interests of Debtors'
9 estates and its creditors and that there are good and sufficient grounds to grant the Motion.

10 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Bankruptcy Local Rule 9014-1,
11 any response or opposition to the Motion must be in writing and must be filed with the Court and
12 served upon the undersigned counsel at least 7 days before the hearing date. The failure to timely
13 file and serve a written opposition may be deemed by the Court to be consent to the granting of
14 the relief requested in the Motion.

15 **WHEREFORE**, based upon this Motion, the annexed Memorandum of Points and
16 Authorities, the annexed Declaration of Barney Ng in Support of the Motion (the "Ng
17 Declaration"), and the record in these cases, Debtors hereby move this Court for the entry of an
18 order:

19 1. authorizing Debtors, under 11 U.S.C. §§ 363(c)(1) and 1108, to employ and
20 compensate the Ordinary Course Professionals in the ordinary course of Debtors' business
21 without the need to seek any other or further order or approval of the Court with respect to the
22 compensation of such Ordinary Course Professionals;

23 2. authorizing Debtors to employ ordinary course professionals other than the above
24 Ordinary Course Professionals, if necessary and appropriate, after complying with the procedures
25 set forth above regarding notice and adjudication of timely filed and served objections, if any; and

26 ///

27 ///

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3. granting Debtors such other and further relief as is necessary and appropriate.

Dated: September 8, 2010

ARENT FOX LLP

By: /s/ Andy S. Kong

Aram Ordubegian

Andy S. Kong

Proposed Attorneys for the

Debtors and Debtors in Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF RELEVANT FACTS**

4 Before commencing these cases, Debtors employed certain professionals in the ordinary
5 course of the Debtors' businesses (the "Ordinary Course Professionals") to assist it with various
6 non-bankruptcy matters such as ensuring compliance with Nevada gaming regulations, hotel
7 management, human resource functions and general legal services. Debtors believe that – given
8 the limited nature of the services provided by the Ordinary Course Professionals, the minimal
9 effect of their services upon the administration of the Debtors' estates, and their ancillary role in
10 the Debtors' reorganization – the Ordinary Course Professionals are not professional persons
11 within the meaning of 11 U.S.C. § 327(a). Additionally, the Ordinary Course Professionals have
12 historically been employed in the ordinary course of the Debtors' business. As a practical matter,
13 it is unduly burdensome and of little benefit to the estates to require the Ordinary Course
14 Professionals to be subject to employment and compensation procedures generally applicable to
15 bankruptcy professionals employed by the Debtors.

16 Debtors hereby seek to employ (1) the law firm of Kelly Law Group, LLP; (2) the gaming
17 compliance and regulation firm of KMC, Inc. ("KMC"); (3) the staffing firm of Elever
18 Professional; and (4) the hospitality management firm of Onsite Consulting as Ordinary Course
19 Professionals to continue to assist it with certain non-bankruptcy matters. The Ordinary Course
20 Professionals will not represent the Debtors in the conduct of its bankruptcy cases or the
21 administration of its estates.

22 Alternatively, if the Court believes some or all of the Ordinary Course Professionals are
23 professional persons under 11 U.S.C. 327(a) or (e), the Debtors respectfully request that the Court
24 authorize their employment under 11 U.S.C. 327(a) or (e). Naturally, if the Court so requests, the
25 Debtors will separately prepare and file employment applications for those Ordinary Course
26 Professionals.

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1 **Kelly Law Group, LLP**

2 Debtors require periodic general legal assistance typically rendered by a general or in-
3 house counsel. Since December 2009, Debtors have retained Kelly Law Group, LLP to render
4 general legal advice and to act as “in-house” general counsel, including addressing issues
5 concerning the administration of the Debtors’ hotel, spa and casino, drafting employment
6 agreements, and various other commercial agreements, advising on business transactions,
7 appearing on behalf of the Debtors before the Nevada Gaming Commission, and coordinating and
8 overseeing the Debtors’ litigation conducted by other outside counsel. Debtors, on average, have
9 paid Kelly Law Group, LLP \$4,000 per month for its legal services and estimates that the
10 compensation to be paid to Kelly Law Group, LLP during the pendency of the Debtors’
11 bankruptcy cases will not exceed \$40,000. For purposes of full disclosure, Matthew Kelly of the
12 Kelly Law Group, LLP is the son-in-law of the Debtors’ managing member.

13 **KMC**

14 Since January 2010, KMC has provided gaming compliance services to the Debtors to
15 ensure that the Debtors are complying with all required Nevada gaming regulations. Debtors, on
16 average, have paid KMC \$8,000 per month for its services and estimates that the compensation to
17 be paid to KMC during the pendency of the Debtors’ bankruptcy cases will not exceed \$80,000.

18 **Elever Professional**

19 Since July 2010, Elever Professional has provided human resource services to the Debtors
20 to implement human resource policies, hiring and firing employees, and overall managing the
21 administrative functions. Debtors, on average, have paid Elever Professional \$10,000 per month
22 for its services and estimates that the compensation to be paid to Elever Professional during the
23 pendency of the Debtors’ bankruptcy cases will not exceed \$100,000.

24 **Onsite Consulting**

25 Since December 2009, Onsite Consulting has provided hotel management and consulting
26 services to the Debtors to make and implement significant operational changes to the Debtors’
27 customer marketing program and third party hotel booking systems (i.e., Expedia, etc.) and in
28 general, increase the Debtors’ revenue. Debtors, on average, have paid Onsite Consulting

1 \$60,000 per month for its services and estimates that the compensation to be paid to Onsite
2 Consulting during the pendency of the Debtors' bankruptcy cases will not exceed \$300,000.

3 II.

4 ARGUMENT

5 **A. Continued Retention and Compensation of the Ordinary Course Professionals** 6 **Should Not Require Court Approval Under 11 U.S.C. §§ 363(c)(1) and 1108.**

7 Under 11 U.S.C. §§ 1107 and 1108, a debtor-in-possession has the right to continue
8 operating its business without the Bankruptcy Court's prior approval. To encourage the
9 continued operation of a business in chapter 11, courts have attached a presumption of
10 reasonableness to a debtor's management decisions. *See Comm. of Asbestos-Related Litigants*
11 *and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615 (Bankr.
12 S.D.N.Y.), *rev'd on other grounds*, 801 F.2d 60 (2d Cir. 1986) (citing *In re Columbia Motor*
13 *Express, Inc.*, 33 B.R. 389, 393 (M.D. Tenn. 1983) and *In re La Sherene, Inc.*, 3 B.R. 169, 174
14 (Bankr. N.D. Ga. 1980) (presumption arises from belief that debtor and current management are
15 best suited to orchestrate debtor's rehabilitation). This presumption reflects Congress's policy of
16 removing the bankruptcy courts from the daily administration of the bankruptcy estate. *See* H.R.
17 Rep. No. 595, 95th Cong., 1st Sess. 404 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 116
18 (1978). Indeed, a debtor's business decisions will only warrant judicial intervention when they
19 are not reasonable, made in bad faith, or exceed the scope of the debtor's authority under the
20 Bankruptcy Code. *See In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981);
21 *cf. Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989) (giving deference to trustee's business
22 management decisions).

23 Under 11 U.S.C. § 363(c)(1), a debtor has the right to enter into transactions and to use the
24 estate's property without notice or a hearing as long as the subject transaction or use of property
25 is made in the ordinary course of business. Courts have used 11 U.S.C. § 363, in conjunction
26 with 11 U.S.C. §§ 1107 and 1108, to allow a debtor to make employment decisions without the
27 intervention of the court, including the decision to hire outside professionals. *See In re Rusty*
28 *Jones, Inc.*, 109 B.R. 838, 841 (Bankr. N.D. Ill. 1989); *Johns-Manville*, 60 B.R. at 615-19.

1 Courts have allowed a debtor to make such employment decisions without notice or a hearing
2 when the employment occurs in the ordinary course of business. *See e.g. Johns-Manville*, 60
3 B.R. at 619. “Persons who are not charged with administering the estate, but who assist the
4 debtor in other capacities may not have to be employed under 11 U.S.C. § 327.” *Rusty Jones*,
5 *Inc.*, 109 B.R. at 841. For example, in *Johns-Manville*, the court found that the debtor’s
6 employment of two professional lobbyists was permissible without notice and a hearing because
7 this activity was undertaken in the ordinary course of the debtor’s business. *Id.* Thus, if Debtors’
8 employment of the proposed Ordinary Course Professionals here is undertaken in the ordinary
9 course of Debtors’ business, then Debtors need not seek any other or further orders of the Court
10 in continuing to retain or compensate such Ordinary Course Professionals; regardless, out of an
11 abundance of caution, the Debtors seek this Court’s guidance.

12 To determine whether an activity falls within the ordinary course of business and therefore
13 does not require court approval, courts rely on two tests: (1) the vertical dimension test,
14 previously known as the creditor’s expectation test, and (2) the horizontal dimension test, also
15 called the industry-wide test. *Burlington Northern R.R. v. Dant & Russell, Inc. (In re Dant &*
16 *Russell, Inc.)*, 853 F.2d 700, 704 (9th Cir. 1988); *Johns-Manville*, 60 B.R. at 616. The
17 employment of the proposed Ordinary Course Professionals satisfies both of these tests.

18 The vertical dimension or creditor’s expectation test analyzes a debtor’s activities “from
19 the vantage point of a hypothetical creditor and inquires whether the transaction subjects a
20 creditor to economic risks of a nature different from those he accepted when he decided to extend
21 credit [to the subject debtor].” *Johns-Manville*, 60 B.R. at 616; *see In re Waterfront Cos., Inc.*, 56
22 B.R. 31, 35 (Bankr. D. Minn. 1985); *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y.
23 1983). The primary focus of this test is on “the debtor’s internal operations and workings [while
24 t]he ‘ordinariness’ of actions taken by a debtor depends upon the nature, type and size of its
25 business.” *Johns-Manville*, 60 B.R. at 617. Specifically, under this test, a debtor’s proposed
26 activity is compared to its pre-petition activities and business practices. *Id.*

27 In this case, in light of the nature of Debtors’ business, which is operating a hotel, spa and
28 casino, Debtors’ creditors should, and doubtlessly do, reasonably assume (and in some cases

1 know) that Debtors regularly do employ and have employed professionals to handle gaming
2 compliance issues, human resource management, and hotel management and consulting services
3 that arise in the ordinary course of business and that it regularly requires general legal services in
4 connection with these issues. The scope of Debtors' daily operations creates a need for the type
5 of routine services for which the Ordinary Course Professionals were retained pre-petition and
6 which may necessarily continue post-petition.

7 By conforming to its creditors' expectations given its business and thereby satisfying the
8 vertical dimension test, Debtors' decision to employ and retain the Ordinary Course Professionals
9 falls within the ordinary course of Debtors' business and obviates the need for Court approval of
10 the continued employment and compensation of such Ordinary Course Professionals.

11 Similarly, under the more objective, but parallel analysis required by the horizontal
12 dimension test, or industry-wide test, Debtors respectfully assert that the Court should find that
13 retention and compensation of the Ordinary Course Professionals does not warrant approval
14 pursuant to 11 U.S.C. § 327. Specifically, the horizontal dimension test asks whether an activity
15 falls within a debtor's ordinary course of business by analyzing "whether the postpetition
16 transaction is of a type that other similar businesses would engage in as ordinary business." *Dant*
17 *& Russell*, 853 F.2d at 704; *Waterfront*, 56 B.R. at 34-35. The primary focus of this test would be
18 on Debtors' business "vis-à-vis similar businesses." *John-Manville*, 60 B.R. at 618. The
19 requisite showing, as articulated by the courts adopting this test, is minimal: "[s]ince this showing
20 is required merely to assure that neither the debtor nor the creditor do anything abnormal to gain
21 an advantage over other creditors, an extensive showing that such transactions occurred often, or
22 even regularly, is not necessary . . . [t]he transaction need not have been common; it need only be
23 ordinary." *In re Economy Milling Co.*, 37 B.R. 914, 922 (D.S.C. 1983) (interpreting the use of
24 the term "ordinary course of business" in 11 U.S.C. § 547(c)(2)); *see also In re D'Lites of*
25 *America, Inc.*, 108 B.R. 352, 355 (Bankr. N.D. Ga. 1989). Specifically, "[a] transaction can be
26 ordinary and still occur only occasionally." *Id.*

27 A company such as Debtors would and should rationally and responsibly retain the
28 services of an outside human resource firm, gaming compliance firm and hotel management firm

1 to perform the numerous administrative and operational functions required of a hotel, spa and
2 casino. Moreover, a business such as the Debtors is doubtlessly going to require the employment
3 of “in-house” general counsel in connection with its business that arise in the ordinary course of
4 business.

5 Therefore, under both the vertical and horizontal dimension tests for determining whether
6 an activity or transaction falls within the ordinary course exception so as to allow a debtor to
7 undertake such activity without order or other intervention of the Court, Debtors respectfully
8 assert that the continued employment and compensation of the proposed Ordinary Course
9 Professionals was part of the ordinary course of Debtors’ business pre-petition, and should
10 continue as such during these bankruptcy cases.

11 **B. Employment of the Ordinary Course Professionals Does Not Require Court**
12 **Approval Because They Are Not Professional Persons within the Meaning of**
13 **11 U.S.C. § 327.**

14 The most widely accepted definition of “professional person,” which is now well
15 established in the case law, is that set forth in *Seatran Lines, Inc.*.

16 For the purposes of section 327(a), ‘professional person’ is limited
17 to persons in those occupations which play a central role in the
18 administration of the debtor proceeding . . . Court approval is
19 required for the retention of attorneys, accountants, appraisers,
auctioneers and persons in other professions *intimately involved in*
the administration of the debtor’s estate.”²

20 In applying this definition, courts have found that the Bankruptcy Code “created a
21 distinction between those persons who were merely involved in the mechanics of the debtor’s
22 business operations... and those persons whose employment actually affected the administration
23 of the debtor’s reorganization.” *Johns-Manville*, 60 B.R. at 620; *In re D’Lites of Am., Inc.*, 108
24 B.R. 352, 355 (Bankr. N.D. Ga. 1989) (“a ‘professional person’ is one who takes a central role in
25 the administration of the bankruptcy estate and in the bankruptcy proceedings, as opposed to one
26 who provides services to the debtor that are necessary whether the petition was filed or not.”); *In*
27 *re Leslie Oil & Gas Co.*, 98 B.R. 774, 775 (Bankr. S.D. Ohio 1989) (“A professional person is

28 ² *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981) (emphasis added).

1 one who plays a central role in the administration of a bankruptcy debtor's affairs and is
2 intimately involved in the administration of the debtor's bankruptcy estate."). Therefore, the
3 employment of persons not charged with administering the estate does not require court approval
4 under section 327 even though their personal employment apart from what they do for the debtor
5 may be considered "professional." *In re Pacific Forest Indus.*, 95 B.R. at 743 ("It is only those
6 who deal with the actual reorganization of the debtor (rather than the ongoing business of the
7 debtor) who are required to be employed under § 327 and whose applications for payment must
8 be approved by the Court.").

9 The fundamental lesson of *Seatrain*, which has been adopted by numerous courts, is that
10 conventional nomenclature does not dictate whether an individual is or is not a professional
11 person for purposes of the Bankruptcy Code. As a general matter, education, specialized
12 expertise, academic degrees, or government licenses may vest an individual with the title of
13 "professional." For purposes of the Bankruptcy Code, however, one's occupation is not
14 determinative: "[T]he phrase "professional person," as used in § 327(a), is a term of art reserved
15 for those persons who play an intimate role in the reorganization of the debtor's estate." *Johns-*
16 *Manville*, 60 B.R. at 619 (concluding that lobbyists are not professionals as they "were not hired
17 to represent or assist Manville in carrying out its duties under title 11... [.] did not play any part in
18 negotiating a plan, adjusting the debtor/creditor relationship, or disposing of or acquiring assets;
19 ... [and did not] perform any other duties of a debtor under the Bankruptcy Code."); *see also In re*
20 *Pacific Forest Indus., Inc.*, 95 B.R. 740, 743 (Bankr.C.D.Cal. 1989) (only those who deal with the
21 actual reorganization of a debtor, rather than the ongoing business of a debtor, are required to be
22 employed with approval of the Court); *In re Neidig Corp.*, 117 B.R. 625, 628-29 (Bankr.D.Colo.
23 1990) (professional person is one who plays a central role in administration of the debtor's
24 estate); *D'Lites of America*, 108 B.R. at 355 (professional person "is one who takes a central role
25 in the administration of the bankruptcy estate and in the bankruptcy proceedings, as opposed to
26 one who provides services to the debtor that are necessary whether the petition was filed or not");
27 *In re Leslie Oil and Gas Co.*, 98 B.R. 774, 775 (Bankr.S.D.Ohio 1989) ("It is not the usual
28 onlooker's perception that a person's occupation is the 'profession' which governs, but rather the

1 substance of the person's role in a debtor's operation."); *In re Century Investment Fund VII Ltd.*
2 *Partnership*, 96 B.R. 884 (Bankr.E.D.Wis. 1989). The qualitative involvement with the chapter
3 11 case must be substantial if it is to elevate an individual into the class of professional persons
4 for purposes of 11 U.S.C. § 327.

5 The employment of the Ordinary Course Professionals here has taken place independently
6 of Debtors' chapter 11 cases and has little effect on, and is not necessarily affected by, Debtors'
7 chapter 11 filings. For the sake of brevity, the Debtors will not reiterate the duties of each of the
8 Ordinary Course Professionals which are provided *supra*, but submit that their duties are not
9 related to the administration of Debtors' estates, its reorganization efforts, or its ability to emerge
10 from bankruptcy, thereby removing the proposed Ordinary Course Professionals from the
11 purview of 11 U.S.C. § 327. Thus, and under these circumstances, the mere fact that the Ordinary
12 Course Professionals may commonly be referred to as "professionals" should not trigger the
13 panoply of procedural requirements that professional persons under 11 U.S.C. § 327 must meet in
14 order to be employed and compensated by the Debtors' estates. Moreover, there are good reasons
15 to exclude the Ordinary Course Professionals from the requirements of 11 U.S.C. §§ 327 and 331.
16 Specifically, to require otherwise would render persons with only a tangential relationship to the
17 reorganization process subject to the retention and compensation requirements of 11 U.S.C. §§
18 327 through 331 at a potentially significant and unnecessary cost to estates and its creditors. The
19 cost of going through the approval process for both retention and compensation is
20 disproportionately high in relation to the cost of these Ordinary Course Professionals in
21 completing their work.

22 Furthermore, the purposes that prior court approval of employment is intended to serve
23 are inapplicable to the proposed Ordinary Course Professionals. The primary purposes of
24 requiring court approval of professionals who are involved in, or integral to, administering the
25 estate, are to prevent conflicts of interest and protect debtors from hiring unnecessary professional
26 help. *See In re Carolina Sales Corp.*, 45 B.R. 750, 753 (Bankr. E.D.N.C. 1985). The Ordinary
27 Course Professionals have been employed by Debtors for some time and have not foisted
28 themselves upon the estate in response to its financial distress. Moreover, the financial

1 arrangements with the professionals were negotiated at arm's length and represent the prevailing
2 market rate for such services. Placing the proposed Ordinary Course Professionals within the
3 confines of 11 U.S.C. § 327 would not further any policy interests underlying these sections of
4 the Bankruptcy Code and would, in fact, hinder the efficient administration of the estates.

5 **III.**

6 **CONCLUSION**

7 **WHEREFORE**, the Court should grant the Motion and authorize Debtors' employment
8 and compensation of the Ordinary Course Professionals and any additional or other Ordinary
9 Course Professionals that may be subsequently identified by Debtors pursuant to the notice
10 procedures outlined in the Motion, in the ordinary course of Debtors' business and without being
11 required to seek any other or further order or approval of the Court, except as expressly provided
12 for herein. Alternatively, if the Court believes some or all of the Ordinary Course Professionals
13 are professional persons under 11 U.S.C. 327(a) or (e), the Debtors respectfully request that the
14 Court authorize their employment under 11 U.S.C. 327(a) or (e). Naturally, if the Court so
15 requests, the Debtors will separately prepare and file employment applications for those Ordinary
16 Course Professionals.

17 Dated: September 8, 2010

Respectfully submitted,

20 **ARENT FOX LLP**

23 By: /s/ Andy S. Kong

Aram Ordubegian

Andy S. Kong

Proposed Attorneys for the
Debtors and Debtors in Possession

DECLARATION OF BARNEY NG

I, Barney Ng, hereby declare as follows:

1. I am over 18 years of age. If called as a witness, I could and would competently testify with respect to the matters set forth in this declaration from my own personal knowledge or from knowledge gathered from others within the Debtors' organization, my review of relevant documents, or my opinion based upon my experience concerning the Debtors' operations.

2. I am the managing member of each of the Debtors and have served in this capacity since May 8, 1998. I am authorized to speak on behalf of the Debtors in these proceedings.

3. Before commencing these cases, Debtors employed certain professionals in the ordinary course of the Debtors' businesses (the "Ordinary Course Professionals") to assist it with various non-bankruptcy matters such as ensuring compliance with Nevada gaming regulations, hotel management, human resource functions and general legal services. The employment of the Ordinary Course Professionals here has taken place independently of Debtors' chapter 11 cases and has little effect on, and is not necessarily affected by, Debtors' chapter 11 filings. The Ordinary Course Professionals have historically been employed in the ordinary course of the Debtors' business. As a practical matter, I believe that it would be unduly burdensome and of little benefit to the estates to require the Ordinary Course Professionals to be subject to employment and compensation procedures generally applicable to bankruptcy professionals employed by the Debtors.

4. Debtors wish to continue to use: (1) the law firm of Kelly Law Group, LLP; (2) the gaming compliance and regulation firm of KMC, Inc. ("KMC"); (3) the staffing firm of Elever Professional; and (4) the hospitality management firm of Onsite Consulting as Ordinary Course Professionals to continue to assist it with certain non-bankruptcy matters. The Ordinary Course Professionals will not represent the Debtors in the conduct of its bankruptcy cases or the administration of its estates

5. Debtors require periodic general legal assistance typically rendered by a general or in-house counsel. Since December 2009, Debtors have retained Kelly Law Group, LLP to render general legal advice and to act as "in-house" general counsel, including addressing issues

1 concerning the administration of the Debtors' hotel, spa and casino, drafting employment
2 agreements, and various other commercial agreements, advising on business transactions,
3 appearing on behalf of the Debtors before the Nevada Gaming Commission, and coordinating and
4 overseeing the Debtors' litigation conducted by other outside counsel. Debtors, on average, have
5 paid Kelly Law Group, LLP \$4,000 per month for its legal services and estimates that the
6 compensation to be paid to Kelly Law Group, LLP during the pendency of the Debtors'
7 bankruptcy cases will not exceed \$40,000. For purposes of full disclosure, Matthew Kelly of the
8 Kelly Law Group, LLP is my son-in-law.

9 6. Since January 2010, KMC has provided gaming compliance services to the
10 Debtors to ensure that the Debtors are complying with all required Nevada gaming regulations.
11 Debtors, on average, have paid KMC \$8,000 per month for its services and estimates that the
12 compensation to be paid to KMC during the pendency of the Debtors' bankruptcy cases will not
13 exceed \$80,000.

14 7. Since July 2010, Elever Professional has provided human resource services to the
15 Debtors to implement human resource policies, hiring and firing employees, and overall
16 managing the administrative functions. Debtors, on average, have paid Elever Professional
17 \$10,000 per month for its services and estimates that the compensation to be paid to Elever
18 Professional during the pendency of the Debtors' bankruptcy cases will not exceed \$100,000.

19 8. Since December 2009, Onsite Consulting has provided hotel management and
20 consulting services to the Debtors to make and implement significant operational changes to the
21 Debtors' customer marketing program and third party hotel booking systems (*i.e.*, Expedia, *etc.*)
22 and in general, increase the Debtors' revenue. Debtors, on average, have paid Onsite Consulting
23 \$60,000 per month for its services and estimates that the compensation to be paid to Onsite
24 Consulting during the pendency of the Debtors' bankruptcy cases will not exceed \$300,000.

25 ///

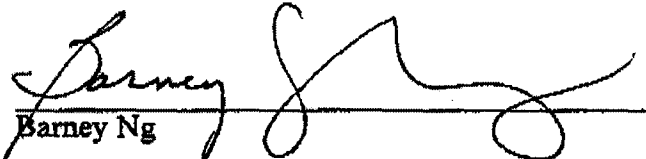
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27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct.

3 Executed this 8th day of September 2010, at Lafayette, California.

4
5 
6 Barney Ng

In re: **Hi-Five Enterprises, LLC**

Debtor(s).

CHAPTER 11

CASE NUMBER 4:10-bk-48268

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: Arent Fox LLP, Gas Company Tower, 555 West Fifth Street, 48th Floor, Los Angeles, CA 90013.

A true and correct copy of the foregoing document described **NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING DEBTORS AND DEBTORS-IN-POSSESSION TO EMPLOY CERTAIN PROFESSIONALS IN THE ORDINARY COURSE OF BUSINESS AND TO SET PROCEDURES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF BARNEY NG IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On September 8, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On September 8, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 8, 2010

Date

SIMONA FILIP

Type Name

/s/ Simona Filip

Signature

ADDITIONAL SERVICE INFORMATION**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") :**

Janet L. Chubb on behalf of Interested Party National Automobile Museum
jlc@jonesvargas.com, tbw@jonesvargas.com

Cecily A. Dumas on behalf of Creditor Konami Gaming, Inc.
cdumas@friedumspring.com, calas@friedumspring.com

Eric D. Goldberg on behalf of Creditor RE Reno, LLC
egoldberg@stutman.com

Lynette C. Kelly on behalf of U.S. Trustee Office of the U.S. Trustee/Oak
lynette.c.kelly@usdoj.gov

William J. Lafferty on behalf of Creditor NV Energy, Inc.
wlafferty@howardrice.com, aray@howardrice.com;jbeyl@howardrice.com;calendar@howardrice.com

Melissa Lor on behalf of Creditor International Game Technology
MLor@Schnader.com, wreinig@schnader.com

Daniel A. McDaniel on behalf of Creditor General Produce Co., Ltd.
dampc@pacbell.net

Office of the U.S. Trustee/Oak
USTPRegion17.OA.ECF@usdoj.gov, ltroxas@hotmail.com

Aron M. Oliner on behalf of Creditor Committee The Official Committee of General Unsecured Creditors for
Hi-Five Enterprises, LLC
roliner@duanemorris.com

II. SERVED BY U.S. MAIL:

Hon. Randall J. Newsome
U.S. Bankruptcy Court
Northern District
1300 Clay Street, Courtroom 220
Oakland, CA 94612

RE Reno LLC
c/o Jeffrey C. Krause
Stutman Treister & Glatt
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

IGT
9295 Prototype Dr.
Reno, NV 89521

Konami Gaming, Inc.
585 Trade Center Drive
Las Vegas, NV 89521

Raymond Leasing Corporation
P.O. Box 130
Greene, NY 13778

PDS Gaming Corporation-Nevada
6280 Annie Oakley Drive
Las Vegas, NV 89120

Wells Fargo Bank, National Association
3800 Howard Hughes Parkway, 4th Floor
Las Vegas, NV 89109

Young Electric Sign Company
775 E. Glendale Ave.
Sparks, NV 89101

Bank Wyoming
435 Arapahoe
Thermopolis, WY 82443-1232

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

REQUEST FOR SPECIAL NOTICE

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Michael E. Wilson
Chief Deputy Attorney General
5420 Kietzke Ln. #202
Reno, NV 89511

GE Money Bank
c/o Recovery Management Systems Corp.
25 SE 2nd Avenue, Suite 1120
Miami, FL 33131-1605
Attn: Ramesh Singh